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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA

No. CR-S-96-0190 DFL GGH P

12 Respondent,
13 vs.

ORDER

14 JAMES ROY BARRON

15 Movant.
16 _____/

17 In the above referenced case, the undersigned issued Findings and
18 Recommendations on November 14, 2006 which found in part, that although counsel has a duty to
19 consult with his client regarding the right to testify, counsel has no duty within that advice to
20 relate that the client has the right to overrule counsel's advice not to testify.¹ No order adopting or
21 rejecting those Findings has been made at this time.

22 Neither the parties, nor the court cited to Florida v. Nixon, 543 U.S. 175, 125 S.Ct.
23 551 (Dec. 13, 2004). Within that case, the Supreme Court stated with respect to the right to
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25 ¹In objections, movant appeared to argue that the undersigned found no duty in general to
26 advise the client regarding the right to testify. If so argued, movant has misperceived the Findings and Recommendations.

1 testify, and several other rights whose ultimate decision regarding those rights is up to the client:
2 “Concerning these decisions, an attorney must both consult with the defendant and obtain consent
3 to the recommended course of action.” Id. At 187, 125 S.Ct. At 560.

4 While the undersigned does not believe that this case requires a counsel to give
5 advice to the client that he may overrule counsel’s advice not to testify in order to receive consent,
6 either express or tacit, reasonable minds could differ. The parties are therefore given five days in
7 which to file supplemental briefs on objections regarding this case.² No brief shall exceed five
8 pages.

9 The court notes from the docket that this Judge Levi case has not been reassigned
10 as have all other Judge Levi cases due to Judge Levi’s resignation. The Clerk shall reassign this
11 case as appropriate so that a district judge’s order may be issued.

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13 IT IS SO ORDERED

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16 DATED: June 29, 2007

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18 /s/
19 GREGORY G. HOLLOWS
20 UNITED STATES MAGISTRATE JUDGE
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26 ²The undersigned does not understand that Florida v. Nixon could in any way affect the
prejudice prong of ineffective assistance of counsel.